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10/533,221	04/29/2005	Heinz Focke	Q87775	7071

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EXAMINER	
NGUYEN, PHU HOANG	
ART UNIT	**PAPER NUMBER**
1791	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,221	FOCKE ET AL.	
	Examiner	Art Unit	
	Phu H. Nguyen	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *16-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *16-25* is/are rejected.

7)☒ Claim(s) *16* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/7/2007, 4/29/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 16 is objected to because of the following informalities: claim 16 contains the phrase: "elimination of (tobacco) lumps" that should be recites as follows: "elimination of tobacco lumps". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "the letter" in the third line of the instant claim 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 is generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Regarding claim 3, Barkmann discloses the sifter preferably includes an at least substantially zig-zag-shaped sifter having a plurality of stages including a lowermost stage (page 2, line 2-4 of paragraph 19).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkmann et al. (U.S Pub. No. 2003/0034040).

Regarding claim 16, Barkmann discloses a device for dressing of fibrous material for further processing, in a distributor (D, fig.1) wherein a metering device is located upstream of guides (33,34, fig.1) and downstream of the sifter (12, fig.1) (as seen in the direction of advancement of the satisfactory constituents, primarily or even exclusively tobacco shreds) from gate (1, fig. 1). Barkmann also discloses the tobacco can be supplied to the sifter via a supply line (9, fig. 1) in the sifter (12, fig. 1), the treated tobacco being capable of being introduced from the sifter directly into the distributor by mean of a duct (reference sign 16, fig.1) (page 5, paragraph 54). Barkmann does not disclose the sifter is a separate member outside the distributor. However, due to lack of criticality or unexpected results, it would be obvious to one of ordinary skill in the art to design the distributor with the sifter as a separate member outside the distributor for purposes such as ease to clean or perform maintenance or space saving for the distributor.

Regarding claim 17, Barkmann also discloses the following features:

a) tobacco can be supplied into the sifter (12, fig. 1) by a supply line (9, fig. 1) at an upper side of the sifter housing, an air duct containing an air source (13, fig. 1) wherein the air duct and the sifting duct from a closed flow circulation system (fig. 1).

b) sifted tobacco being capable of being introduced from the sifter directly into the distributor by mean of a duct (reference sign 16, fig.1) (page 5, paragraph 54).

Regarding claims 18-19, Barkmann discloses the sifter is designed as a zigzag sifter (12, fig. 1) with upright guide body surrounded by a guide wall forming a wavy or zigzag sifting duct. Barkmann does not expressly disclose the guide body consists of a preferably two double cones arranged one above the other. However, cone type sifter and zigzag sifter are alternative of each other as admitted by applicant (paragraphs 7-8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to alternatively choose a cone-type sifter instead of a zigzag sifter. Furthermore, adding the second zigzag path in the double cone type sifter configuration is mere duplication of parts that has no patentable significance unless a new and unexpected result is produced. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Regarding claim 20, Barkmann discloses the distributor (D, fig. 1) and the sifter (12, fig. 1) are mounted on a machine stand (below reference point 38, between reference points 47 and 49).

Regarding claim 21-22, Barkmann discloses collecting chamber (by reference sign 66) for sifted tobacco is arranged above the guide body, the connecting line (reference sign 16, fig. 1) being connected to the sifter at the collecting chamber.

Regarding claim 23, Barkmann discloses an airbox (47, fig. 1) at the lower area of the sifter (12, fig. 1) and surrounded by a sieve (46, fig. 1) (corresponding to the claimed air-permeable conical sieve (28)).

Regarding claim 24, Barkman conveying the sifted tobacco from the sifter into the distributor housing, but Barkman does not expressly disclose a flaps which are pivoted doward in order to open a lock to the distributor. However, Barkman discloses cell wheel gate (28, fig. 1) that performs the same function as the claimed flaps of the instant claim 24 which is allowing the sifted tobacco to go downwards as it passes through the cell wheel gate. Since both cell wheel gate and flaps are a type of gate, it would have been obvious to one of ordinary skill in the art at the time the invention was made to alternatively use one for the other.

Regarding claim 25, Barkmann discloses a device for the dressing of cut tobacco for the production of cigarettes the tobacco being treated within a distributor by loosening up, eliminating tobacco lumps and by sifting, preparing the tobacco for forming a tobacco strand with aid of a metering system (27, fig.1), characterized by the following features:

a) a sifter (12, fig. 1) and the metering system (27, fig.1) are arranged within a common distributor (D, fig. 1).

b) the sifter consists of an upright sifting duct into which the tobacco is conveyed,

c) at the lower end of the sifting duct is connected to an upright air duct through which air is conducted into the sifting duct, the air being generated by a blower (13, fig. 1) (corresponding to the claimed "fan").

d) the air duct follows with an upper region coupled to an upper end of the sifting duct in such a way that the sifting duct and the air duct form a closed flow circulation system (page 3, paragraph 35).

e) a tobacco stream from the sifting duct is deflected by a deflecting duct (reference sign 16, fig. 1) which follows the sifting duct in which the tobacco stream is supplied into the metering system (27, fig. 1) in a downwardly direction,

f) in the region of the deflecting duct a Coanda separator working with tubular body (66, fig. 1) where air is separated from tobacco under the influence of centrifugal force and by the Coanda effect (page 5, paragraph 51). This is be equivalent to the use of air permeable drum recites in the instant claim 14 which air can be sucked in by the fan in the air duct since both accomplish the object of separating the air from the tobacco.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 25 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6782890. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both point to an apparatus for feeding cut tobacco through a zig-zag sifter to a metering system to form tobacco strand.

Response to Arguments

Applicant's arguments filed 9/10/2007 have been fully considered but they are not persuasive.

Applicant argues that new claim 16 recites the tobacco is first conveyed through the sifter and after sifting the tobacco is conveyed into the distributor. Hence, all of the tobacco is treated by the sifter before the tobacco is introduced into the distributor which is not disclosed by Barkmann. However, it would have been obvious to one of ordinary skill in the art to rearranged parts to make it easier to perform maintenance on the sifter when is it rearranged to be outside of the distributor.

Applicant also argues that Barkmann does not disclose a double cone sifter. However, cone type sifter and zigzag sifter are alternative of each other as admitted by applicant (paragraphs 7- 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to alternatively choose a cone-type sifter instead of a zigzag sifter. Furthermore, adding the second zigzag path in the

double cone type sifter configuration is mere duplication of parts that has no patentable significance unless a new and unexpected result is produced. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Applicant further argues that Barkmann does not disclose the drum (64). However, Barkmann discloses a Coanda separator working with tubular body (66, fig. 1) where air is separated from tobacco under the influence of centrifugal force and by the Coanda effect (page 5, paragraph 51). This is be equivalent to the use of air permeable drum recites in the instant claim 14 which air can be sucked in by the fan in the air duct since both accomplish the object of separating the air from the tobacco.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phu H. Nguyen whose telephone number is 571-272-5931. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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P.N 11/25/2007